

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0320P**

**Sales and Use Tax**

**Calendar Years 1994, 1995, 1996, and 1997**

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**ISSUE(S)**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer is a manufacturer and retailer with three outlet mall retail stores in Indiana, which have been closed. Taxpayer filed bankruptcy prior to the audit period and is currently making payments under a court-approved plan.

Taxpayer, in a letter dated June 10, 1998 protests the penalty assessed on an audit completed on April 1, 1998. The assessment stemmed from the taxpayer's failure to remit all of the sales tax collected for November and December 1994 and its failure to remit use tax on clearly taxable items in 1994 and 1995. No tax is due for calendar years 1996 and 1997.

I. **Tax Administration** – Penalty

**DISCUSSION**

At issue is whether the taxpayer was negligent in remitting trust tax and use tax.

Taxpayer requests the department waives its penalties as the company moved its tax department from one state to another mid year 1990 at which time it also filed for bankruptcy. Personnel changes were

made in the tax department, as well as the records retention department. During this transition of accounting systems, some records were misplaced. Taxpayer further states they have been in the process of regrouping and straightening out all their files, therefore request a waiver of the penalties assessed.

Taxpayer has not provided reasonable cause to allow the department to waive the negligence penalty. Taxpayer was aware it had collected excess tax shortly after having done so but did not make an adjustment in subsequent returns. Taxpayer also realized it had use tax liabilities in 1995 and began accruing, but did not retroactively report previous untaxed transactions.

### **FINDING**

Taxpayer's protest is denied.